

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 24602 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE K.M.MEHTA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**
 - 2 To be referred to the Reporter or not ? **-No.**
 - 3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**
 - 5 Whether it is to be circulated to the civil judge ? **-No.**
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BHAVANBHAI SHANKERBHAI PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR JAYANT P BHATT for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
RULE NOT RECD BACK for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 27/01/2006

ORAL JUDGMENT

1.Bhavanbhai Shankerbhai Patel, petitioner-detenu has filed this habeas corpus petition under Article 226 of

the Constitution of India for quashing and setting aside the impugned order of detention dated 10/12/2005 passed by the District Magistrate, Surendranagar as being illegal, invalid, null and void, arbitrary, suffers from total non application of mind and violative of Articles 14, 21 and 22 of the Constitution of India. Petition has been filed on 23/12/2005. The matter was placed for hearing before this Court and this Court has issued Rule on 16/1/2006. On behalf of respondents, Mr.L.R.Pujari, learned APP appears. Therefore, with consent of parties, matter has been taken up for final haring to this Court.

2.Mr.Jayant P.Bhatt, learned advocate appears for the petitioner. He has stated that there are several grounds but he has confined to only one ground i.e. illegible documents. Page 73, 75 and 77 of the documents are illegible. The learned advocate has submitted that this is failure on the part of the detaining authority to supply legible copies of the documents. The detenu has right under Article 22(5) of the Constitution of India to have legible copies of the documents to enable the detenu to make effective representation in this behalf. For the same, the

learned advocate has relied upon the judgment of the Division Bench of this Court (Coram:J.U.Mehta and S.M.Soni, J.J.) in the case of Mulchandbhai Sobharajmal Ganvani v. The Secretary to Government of Gujarat and others, reported in 1991 (1) GLR 421 where the Division Bench of this Court has relied upon the judgment of the Hon'ble Supreme Court in the case of Smt.Dharmishta Bhagat v. State of Karnataka, reported in 1989 Supp.(2) SCC 155 wherein the Hon'ble Supreme Court has observed that it is imperative that the detaining authority must serve grounds of detention which include also all the relevant documents which had been considered in forming the subjective satisfaction by the detaining authority before making the order of detention, and referred to in the list of documents accompanying the grounds of detention in order to enable the detenu to make effective representation to the advisory board as well as to the detaining authority. The Division Bench has thereafter held that hence failure on the part of the detaining authority to supply legible copy of the said relevant documents to the detenu for making an effective representation infringed the detenu's right under article 22(5) of the Constitution of India.

3.Mr.L.R.Pujari, learned APP has also seen the said pages and conceded that the said pages are illegible. This Court has also seen the same.

4.It may be noted that hear the petitioner has also made representation dated 20/12/2005.

5.The learned advocate for the petitioner has relied upon the judgment of the Hon'ble Supreme Court and Division Bench of this Court. He has also relied upon the judgment in the case of Kantilal Mathurdas Dave v. State of Gujarat in Sp. Civil Application No.24429 of 2005 decided today by this Court (Coram:K.M.Mehta, J.).

6.In view of the same, petition is allowed. Order of detention dated 10/12/2005 passed by the District Magistrate, Surendranagar is quashed and set aside. Bhavanbhai Shankerbhai Patel, detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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